

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, Case No. 3:12-mj-7045
Toledo, Ohio
Plaintiff, Friday, August 10, 2012

vs.

HIROSHI YOSHIDA,
Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE VERNELIS K. ARMSTRONG
UNITED STATES MAGISTRATE JUDGE

MOTION HEARING

APPEARANCES:

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1 P R O C E E D I N G S

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3 THE COURT: Good afternoon. The case before the
4 court this afternoon -- thank you so much, David -- is the
5 United States of America versus Hiroshi Yoshida, Case
6 3:12-mj-7045.

7 Is he okay? Can you hear? Can you hear?

8 THE INTERPRETER: I can -- I can hear.

9 UNKNOWN SPEAKER: Unless we plug the fingers in my
10 ear -- in our ear, because the English and Japanese are --

11 THE COURT: Oh.

12 THE INTERPRETER: I'm sorry, but I'm not able to
13 hear. The interpreter is not able to hear whatever was just
14 said now.

15 THE COURT: It was not intended to be heard.
16 You're fine.

17 The case before the court is the case of
18 Mr. Hiroshi Yoshida, and the court would state the
19 appearances present in court this afternoon is a Ms. Heidi
20 Manschreck, Mr. Rob Jacobs and Ms. Ava Dustin, Supervisory
21 Assistant United States Attorney here in the Northern
22 District of Ohio on behalf of the government.

23 And also present for the defendant is his counsel,
24 Mr. Stephen Squeri, together with his co-counsel, Mr. Justin
25 Letts.

1 Are the parties ready to proceed?

2 MR. SQUERI: We are, Your Honor.

3 THE COURT: Government ready to proceed?

4 MS. MANSCHRECK: We are, Your Honor.

5 THE COURT: All right. Thank you.

6 MS. DUSTIN: Your Honor, I would note for the
7 record that I am not making an appearance in the case. I am
8 just here as an advisory for the attorneys that are
9 representing --

10 THE INTERPRETER: I'm sorry, Your Honor. I am not
11 able to hear anything.

12 THE COURT: I'll repeat that. Ms. Ava Dustin
13 stated that she is not making an appearance in this case,
14 she is just here in an advisory capacity with counsel Heidi
15 Manschreck and Rob Jacobs.

16 Did you understand that?

17 THE INTERPRETER: I can't hear very well.

18 THE COURT: The court should also note that
19 Mr. Mark Miller of pretrial services is present for the
20 hearing today.

21 We are here today upon the defendant's motion to
22 modify conditions of pretrial release. The defendant,
23 Mr. Hiroshi Yoshida, was charged in a criminal complaint
24 that was filed on June 15th of 2012, with a charge of
25 conspiracy in restraint of trade or commerce, in violation

1 of Title 15 of the United States Code, Section 1.

2 Mr. Yoshida has been released upon bond subject to
3 conditions.

4 We are here today to address those conditions and
5 defendant's motion to modify conditions of pretrial release.

6 Mr. Squeri, would you like to go forward?

7 MR. SQUERI: Yes, Your Honor. Thank you very --
8 thank you very much for taking the time to conduct this
9 hearing for us today.

10 As -- as you indicated, I'm here today accompanied
11 also by my co-counsel, Justin Letts of our firm. I
12 understand now we do have an interpreter available for our
13 motion. This is a continuation of a hearing that we
14 originally had set on July 26th.

15 Your Honor, I have the privilege of representing
16 my client, Hiroshi Yoshida, who is a citizen of Japan, who
17 works at a Japanese-owned company that has established
18 manufacturing operations here in the United States, an
19 operation that is employing about 500 people.

20 As I mentioned when we met last time, we intend to
21 at least call one witness, Special Agent Kevin Brown. And I
22 expect he will be the only witness that we call.

23 THE INTERPRETER: I'm sorry, Your Honor. I really
24 apologize, but I'm not able to hear the counsel well, so --

25 THE COURT: Did you hear anything that he said?

1 THE INTERPRETER: I did hear it, but I'm not
2 hearing like some of the words. So if he can speak into the
3 microphone or some other way, because I'm not able to hear
4 the entirety of his argument.

5 MR. SQUERI: Okay. I will try. Is that better?

6 THE INTERPRETER: That's much better. Thank you
7 very much.

8 MR. SQUERI: Okay. I will try to speak more
9 directly --

10 THE INTERPRETER: Thank you.

11 MR. SQUERI: -- into the microphone.

12 As I mentioned, Your Honor, beyond Special Agent
13 Kevin Brown, we do not intend to call any other witnesses,
14 but we do plan to proffer certain additional information for
15 the court's consideration after we do call Agent Brown.

16 Before we do call Agent Brown to the stand, please
17 allow me to just briefly summarize our position and why we
18 believe the facts here support and justify the change in the
19 conditions here, that is, the removal of the electronic
20 monitoring.

21 We intend, among other things, Your Honor, to show
22 that the release condition of electronic monitoring here is
23 unnecessary in this case, and that it is extraordinary to
24 require it in a case of this nature.

25 As DOJ has acknowledged, and as we've previously

1 discussed with the court, one of the premises for imposing
2 the condition on Mr. Yoshida has proved to be incorrect.
3 But our arguments go well beyond that.

4 And it is important to note, as the court may give
5 a certain amount of deference, we understand, to the earlier
6 decision of the magistrate judge in Columbus, that there was
7 not a full opportunity to vet the relevant considerations on
8 the day of Mr. Yoshida's arrest.

9 I would just observe, first of all, prior to that
10 day, Mr. Yoshida was not represented by counsel, which is
11 not surprising given that DOJ had not issued a target letter
12 at that point in time.

13 So as his counsel, we were very limited on that
14 day in what we could say or do. DOJ had had its own
15 substantial responsi- -- opportunity to conduct this
16 investigation over a period of many months, while there was
17 essentially nothing that we knew about this investigation
18 until the day Mr. Yoshida was arrested.

19 And I need to add that that needs to be considered
20 in light of the fact that this is in no sense a
21 garden-variety case. It is an antitrust case with
22 international implications. The issues and the context,
23 therefore, are necessarily more complex.

24 And this was true not just for counsel on that
25 day, but also for the magistrate judge before whom

1 Mr. Yoshida was brought when he was arrested. This was not
2 a typical criminal prosecution. And the knowledge of the
3 nuances with this pros- -- associated with this prosecution
4 were known only by DOJ at that time.

5 So I would ask the court, while giving the earlier
6 ruling appropriate deference, to recognize that this is
7 really the first opportunity that we have to fully vet the
8 issues as to whether or not it is appropriate to impose
9 these conditions of release.

10 Your Honor, we also intend to do more than talk
11 about the mistake rooted in the incorrect translation of the
12 telephone conversation described in the affidavit submitted
13 by DOJ.

14 We would also intend to show that DOJ has
15 attempted to paint a picture of our client that is not
16 consistent with the evidence.

17 Mr. Yoshida is a respected businessman. He is now
18 entering into the second year of his second tour of duty
19 here in the United States. He previously worked here in the
20 United States for five years, from 1998 until -- until 2003,
21 and always conducted himself in compliance with U.S. law
22 while in this country.

23 He has roots in our community in that he works for
24 a company with substantial operations here in Ohio. I
25 mentioned before that this was -- these are manufacturing

1 operations that employ approximately 500 people here in the
2 United States.

3 And he has worked for the same -- this same
4 company, its parent company, for more than 30 years, his
5 entire career, since he graduated from college.

6 Your Honor, Mr. Yoshida is prepared to answer the
7 criminal charges the U.S. says -- United States says that
8 they intend to bring against him, consistent with the laws
9 of our country. And he is not going to leave this country
10 while those charges are pending. And his employer expects
11 him to act accordingly.

12 And contrary to the suggestion of DOJ, there is no
13 real practical incentive for his employer to send him back
14 to Japan. In fact, it's to the contrary.

15 DOJ's opposition to our motion relies, among other
16 things, on the weight of the evidence. And let me be clear,
17 and I am in part responding to a specific statement made in
18 DOJ's papers, we are in no sense conceding what is stated in
19 the government's affidavit. We do not agree with the
20 government's statement regarding the weight of the evidence,
21 or statements about Mr. Yoshida's present willingness to
22 somehow violate United States antitrust laws.

23 We believe as well that the government has grossly
24 overstated the risk of flight. In fact, the government's
25 arguments in this respect are based upon inaccurate

1 premises.

2 With that, Your Honor, I would first proceed,
3 before getting to the rest of my argument and the proffering
4 of evidence, to call Special Agent Kevin Brown to the stand.

5 THE COURT: Thank you. Ms. Manschreck, do you
6 wish to make any statement at this time?

7 MS. MANSCHRECK: Your Honor, if you don't mind, I
8 would like to respond to some of the arguments that have
9 been made before the witness is put on.

10 THE COURT: Do you have any objections to the
11 witness that you want to state at this time as well?

12 MS. MANSCHRECK: Yes. And also, I would state for
13 the record that the government does object to the calling of
14 this witness at this point.

15 We do not believe that this witness has relevant
16 information for the issue of the bond modification that is
17 the subject of this hearing.

18 THE COURT: And would you like to state a response
19 to Mr. Squeri at this time? You certainly may do so.

20 MS. MANSCHRECK: Actually, Your Honor, I can wait
21 for that until afterwards.

22 THE COURT: All right. The court is aware of your
23 objection and the court has considered it and decided to
24 overrule your objection and permit Special Agent Brown to
25 testify on a limited basis, reminding Mr. Squeri that this

1 is a detention hearing, not a preliminary hearing or a
2 discovery hearing. This is merely a bond hearing.

3 And when I say "merely," I don't mean that it's
4 not important, it's a very important hearing. But the
5 nature of the hearing is bond as opposed to probable cause
6 hearing.

7 And I'd direct you to keep that in mind as you
8 question Special Agent Brown.

9 MR. SQUERI: Sure. Sure, Your Honor. As I
10 mentioned in chambers, our inquiry into the merits will be
11 relatively limited and is intended to directly respond to
12 the government's assertions on page 5 of its brief.

13 THE COURT: All right. Thank you.

14 Agent Brown, would you please come forward and be
15 sworn?

16 KEVIN BROWN, of lawful age, a witness called by
17 the United States, being first duly sworn, was examined and
18 testified as follows:

19 THE CLERK: Have a seat.

20 THE COURT: You may be seated.

21 THE WITNESS: Thank you.

22 THE COURT: You may proceed, Mr. Squeri.

23 MR. SQUERI: Thank you, Your Honor.

24 DIRECT EXAMINATION OF KEVIN BROWN

25 BY MR. SQUERI:

1 Q. Please state your name for the record.

2 A. Kevin Brown.

3 Q. And, Mr. Brown, are you a special agent with the FBI's
4 Cleveland division?

5 A. Yes, I am.

6 Q. And is it true that you have been assigned to an
7 investigation involving alleged collusion involving the sale
8 of anti-vibration rubber parts?

9 A. Yes.

10 Q. And your assignment to this investigation that involves
11 this case began in approximately October of 2011; is that
12 correct?

13 A. Yes.

14 Q. And, Special Agent Brown, did you sign an affidavit in
15 support of a criminal complaint issued in the case here
16 against Hiroshida -- Hiroshi Yoshida, which is the case that
17 we are here on today?

18 A. Yes, I did.

19 Q. And do you have a copy of that affidavit with you?

20 A. No, I do not.

21 MR. SQUERI: Your Honor, may I hand the witness a
22 copy of the affidavit?

23 THE COURT: You may. You may.

24 MR. SQUERI: I have a -- Your Honor, I have a copy
25 for the court, too. I assume the government has it. You

1 have it? Okay.

2 Thank you.

3 THE COURT: And the court would note for the
4 record that the interpreter has a copy of the affidavit.

5 MR. SQUERI: Oh. Thank you, Your Honor.

6 BY MR. SQUERI:

7 Q. Agent Brown, you understand that the sworn statements
8 made by you in this affidavit have also been relied upon
9 here by the United States on the issue of what conditions of
10 release ought to be maintained with respect to Mr. Yoshida?

11 A. I'm sorry, I --

12 MS. MANSCHRECK: Objection. I don't believe --

13 THE COURT: Sustained. You don't know what --
14 that's an improper question. You don't know what he knows
15 the government relied upon.

16 BY MR. SQUERI:

17 Q. Well, Agent, have you, in fact, participated in
18 formulating the positions taken here by the United States
19 with respect to the conditions of release that have been
20 established with respect to Mr. Yoshida?

21 MS. MANSCHRECK: Objection. That's a legal
22 question.

23 THE COURT: Sustained.

24 BY MR. SQUERI:

25 Q. In any event, you understand that the purpose of this

1 hearing today is to determine whether the conditions imposed
2 with respect to Mr. Yoshida ought to be modified, that is,
3 the conditions that relate to his electronic monitoring?

4 **A.** Yes.

5 **Q.** Agent Brown, the investigation leading to this
6 complaint was being conducted as a result of information
7 supplied by an applicant under the U.S. Justice Department's
8 Antitrust Division's leniency program; is that correct?

9 **A.** Yes.

10 **Q.** And this program is also called an amnesty program; is
11 that correct?

12 **A.** Yes.

13 **Q.** And that's because it doesn't only provide leniency for
14 companies that take advantage of it, but also provides
15 amnesty from a corporate applicant, that is,
16 non-prosecution?

17 **MS. MANSCHRECK:** Objection. No basis for that.

18 **MR. SQUERI:** It's in his declaration -- it's in
19 his affidavit, Your Honor.

20 **THE COURT:** It's my understanding it was in the
21 affidavit.

22 **MS. MANSCHRECK:** My objection is that the agent
23 has no basis for explaining why it might be called the
24 amnesty program versus the leniency program.

25 **THE COURT:** All right. Sustained to that extent.

1 BY MR. SQUERI:

2 Q. You are aware of the fact that the program provides for
3 more than leniency, but, in fact, provides for
4 non-prosecution; isn't that correct?

5 A. Under certain conditions, yes.

6 Q. And it -- and it allows for non-prosecution also of
7 employees of a company that makes an amnesty application,
8 correct?

9 A. Again, under certain conditions, that's my
10 understanding, yes.

11 Q. And here, the leniency or amnesty applicant is [REDACTED]
12 [REDACTED] is that correct?

13 A. I believe we refer in the affidavit to the applicant as
14 Company A.

15 Q. And that Company A also employed CW-1 and CW-2,
16 employees of -- who also have been granted some type of
17 leniency or applicant --

18 MS. MANSCHRECK: Objection. There's no basis to
19 conclude that those individuals have been granted leniency.

20 MR. SQUERI: Either he knows or he doesn't know.

21 THE COURT: He can answer --

22 MS. MANSCHRECK: There is no factual basis for the
23 question.

24 THE COURT: He can answer if he knows.

25 THE WITNESS: Could you repeat your question,

1 please?

2 BY MR. SQUERI:

3 Q. Yes, Agent. Are you aware of the fact that CW-1 and
4 CW-2 are being allowed the benefit of non-prosecution under
5 the amnesty application filed by Company A, [REDACTED]
6 [REDACTED]?

7 A. I believe that they have the ability to fall under that
8 program as well, yes. But where they stand in that program
9 right now, I do not know.

10 Q. You don't know where they are in the process, but
11 non-prosecution is available to them, based upon your
12 understanding, correct?

13 A. Under certain conditions, yes.

14 Q. Agent Brown, are you aware of the fact that there are
15 many antitrust grand jury investigations and prosecutions
16 going on today in the United States?

17 A. I'm aware that there are others certainly, yes. How
18 many, I do not know.

19 Q. You are not aware of the fact that, you know, at any
20 given point in time, there is an average of about a hundred
21 antitrust grand jury investigations going on in the United
22 States?

23 A. No, I have no idea how many.

24 Q. All right. Are you aware of any other antitrust cases
25 involving individuals who are subject to those

1 investigations being -- where individuals have been
2 subjected to electronic monitoring as in the case of
3 Mr. Yoshida?

4 MS. MANSCHRECK: Objection, Your Honor. It's
5 really not relevant to this issue.

6 THE COURT: Relevancy. Sustained.

7 MR. SQUERI: Your Honor, can I -- can I be heard
8 on that subject?

9 THE COURT: Certainly.

10 MR. SQUERI: This is an issue which we discussed
11 in chambers the last time we were here, and we had made the
12 assertion that at that time, that this was unusual, that
13 what -- for this kind of condition to be imposed.

14 THE INTERPRETER: The interpreter is not able to
15 hear.

16 MR. SQUERI: Okay. I will speak -- I will speak
17 more directly into the microphone.

18 THE COURT: Don't look at me, just --

19 MR. SQUERI: Sorry.

20 Your Honor, when we met the last time in chambers,
21 we had discussed the fact that it was our position that this
22 was unusual, and the court asked us to substantiate that,
23 and we are trying to substantiate it. We think it's -- we
24 think it's relevant. It's an easy line of questioning. And
25 either the witness knows things or he doesn't, and we can

1 move on and I can offer other evidence later on.

2 THE COURT: Do you wish to respond,
3 Ms. Manschreck?

4 MS. MANSCHRECK: Yes, Your Honor. Whether it's
5 usual or not has no bearing on whether there's a risk of
6 flight for this particular defendant. And the United States
7 continues to be of the position that it has absolutely no
8 relevance for this hearing.

9 It sounds to the United States as if the defendant
10 is attempting to question the tactics of the Department of
11 Justice here, which really are not at issue.

12 MR. SQUERI: Your Honor, I would respectfully
13 disagree very strongly with the government here. The fact
14 that -- that they typically do not take these kinds of
15 steps, or seek this kind of -- these kinds of conditions in
16 these cases I believe is highly relevant in us demonstrating
17 that this is an extraordinary condition for them to seek
18 under these circumstances.

19 THE COURT: But is this the witness to obtain that
20 information from? I don't think it's relevant in this
21 instance.

22 If you have statistics that you can pull from the
23 Department of Justice, I think that's one argument. But I
24 don't think it's relevant here based on this witness.

25 MR. SQUERI: I understand. I mean, the witness

1 knows what he knows. And he's part of the team. And if he
2 considered -- if he knows whether or not what they've done
3 in other cases applies here, fine. If he doesn't, he
4 doesn't know.

5 THE COURT: The court reaffirms its earlier ruling
6 that it's irrelevant.

7 BY MR. SQUERI:

8 Q. Agent Brown, at the time that you signed your
9 affidavit, you believed that there was a reference during
10 that phone conversation -- during the phone conversation
11 that's referred to in that affidavit, to a JFTC
12 investigation; is that correct?

13 A. Yes.

14 Q. And JFTC, just for the record, stands for Japan Fair
15 Trade Commission, correct?

16 A. I'm not sure of the exact what it stands for, but I'm
17 aware that it's the Japanese version of the ant- -- similar
18 to antitrust, yes.

19 Q. Yes. And, in fact, it was your understanding at that
20 time that they had their own investigation going on with
21 respect to the same matters that are at issue in this case;
22 is that correct?

23 MS. MANSCHRECK: Objection. No basis.

24 MR. SQUERI: Your Honor, he represented in his --

25 THE COURT: I think it was set forth in the

1 affidavit.

2 MR. SQUERI: Yes.

3 MS. MANSCHRECK: Your Honor, there was nothing set
4 forth in the affidavit referring to our awareness of the
5 existence of a JFTC investigation of Mr. Yoshida. And I
6 would point you, Your Honor, to --

7 MR. SQUERI: I can rephrase the question if it's
8 specific as to Mr. Yoshida.

9 THE COURT: All right. Thank you.

10 BY MR. SQUERI:

11 Q. You -- you are aware of the fact, are you not, that
12 there -- that [REDACTED] went in as an amnesty applicant to the
13 Japan Fair Trade Commission with respect to these
14 allegations of collusion involving the sale of
15 anti-vibration rubber parts; is that correct?

16 A. I'm sorry, repeat your question. I was trying to read
17 at the same time. I apologize.

18 Q. No problem. I'll repeat the question for you.

19 You were -- you are aware of the fact that the amnesty
20 applicant in this case [REDACTED] has also made an amnesty
21 application to the Japan Fair Trade Commission; is that
22 correct?

23 A. I was aware at the time of this affidavit that the
24 company that we referred to as Company A had also applied to
25 a similar program in Japan, yes.

1 **Q.** Now, your affidavit suggested, based upon what you
2 understood was said during that phone conversation, that
3 Mr. Yoshida was somehow being transferred back to Japan
4 because of something related to a JFTC investigation; is
5 that correct?

6 **A.** My understanding was that, yes, Mr. Yoshida was
7 potentially being transferred back to Japan because of, yes,
8 the JFTC in Japan.

9 **Q.** But you came to learn that that understanding was in
10 error, correct?

11 **A.** That's part of that -- the reason for his transfer was
12 different than what we had believed at the time of the
13 affidavit, yes; but not the fact that he was potentially
14 being transferred back to Japan.

15 **Q.** Right. And just to be clear, when you prepared and
16 signed your affidavit, you believed it to be accurate,
17 because that's what was found in a transcript created by an
18 interpreter working for the Department of Justice, correct?

19 **A.** Correct.

20 **Q.** And -- and that's what you had also been told by CW-2;
21 is that correct?

22 MS. MANSCHRECK: Objection. No basis.

23 THE COURT: Sustained.

24 BY MR. SQUERI:

25 **Q.** Were you told anything by CW-2 about any mention during

1 that phone conversation about a JFTC investigation?

2 A. I don't recall.

3 Q. Did you attempt to confirm with him -- well, did you
4 debrief him following that phone conversation?

5 A. Briefly, yes.

6 Q. And did he or did he not mention the JFTC
7 investigation -- a JFTC investigation during -- let me
8 rephrase that.

9 Did he or did he not mention anything about the JFTC
10 during that debriefing?

11 A. I don't recall if he mentioned JFTC or not during the
12 debriefing.

13 Q. Did he make any mention of any agency in Japan?

14 A. Not to my recollection during the debriefing, no.

15 Q. At any point in time, did he ever make any mention of
16 the JFTC with respect to his conversation that he had with
17 Mr. Yoshida?

18 A. I don't recall.

19 Q. Did you attempt to verify with CW-2 whether or not any
20 statement had been made about the JFTC during this
21 conversation with Mr. Yoshida?

22 A. At the time of the debriefing, I received simply a
23 brief overview of the call in general. We did not get into
24 a lot of specifics.

25 Q. Before you signed your affidavit, did you at any -- had

1 you at any point in time discussed the subject of a JFTC
2 mentioned with CW-2?

3 **A.** No.

4 **Q.** And it's true, Agent Brown, that subsequent to the
5 tape-recorded phone conversation, you began monitoring
6 international flights to see whether or not Mr. Yoshida
7 planned to leave the country; is that correct?

8 MS. MANSCHRECK: Objection. Again, no basis.
9 Mr. -- the agent has not said that he personally was a
10 monitor.

11 THE COURT: Will you rephrase your question?

12 MR. SQUERI: I'll rephrase the question.

13 BY MR. SQUERI:

14 **Q.** It is your understanding, Agent Brown, that subsequent
15 to that tape-recorded telephone conversation on May 30,
16 2012, that you or others within the United States Government
17 began monitoring international flights to see whether or not
18 Mr. Yoshida planned to leave the country?

19 **A.** Essentially, yes.

20 **Q.** And did you find any indication that Mr. Yoshida had
21 made such arrangements?

22 **A.** No.

23 **Q.** And the day after the phone conversation, that is, May
24 31, 2012, one of your colleagues, Special Agent Sante,
25 participated in an interview of Mr. Yoshida; is that

1 correct?

2 **A.** Yes.

3 **Q.** And when Mr. Yoshida was interviewed, there was no
4 indication given that he was about to leave the United
5 States, was there?

6 MS. MANSCHRECK: Objection. Again, no basis.

7 MR. SQUERI: All right.

8 THE COURT: Sustained.

9 BY MR. SQUERI:

10 **Q.** Agent, let me refer you to paragraph 13 of your
11 declaration. Paragraph 13, you discuss the interview that
12 was conducted by Agent Sante of Mr. Yoshida on May 31, 2012;
13 is that correct?

14 **A.** Yes.

15 **Q.** And is it fair to say that at least as of the time that
16 you wrote this affidavit, you completed this affidavit, you
17 had no information that Mr. -- that Mr. Yoshida had
18 indicated anything about leaving the United States?

19 MS. MANSCHRECK: Objection. No basis.

20 THE COURT: Will you rephrase your question?

21 BY MR. SQUERI:

22 **Q.** Was anything -- strike that.

23 You received and were privy to a report concerning
24 Agent Sante's interview of Mr. Yoshida on May 31, 2012; is
25 that correct?

1 **A.** Yes.

2 **Q.** Based on that report, did you have any information
3 indicating that Mr. Yoshida was planning to leave the United
4 States?

5 MS. MANSCHRECK: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: I'm not aware of any information in
8 the report of that interview of Mr. Yoshida mentioning
9 international travel, no.

10 BY MR. SQUERI:

11 **Q.** And isn't it true, Agent, that on that day, Mr. Yoshida
12 let the FBI and Justice Department into his home and agreed
13 to an interview that lasted for four and a half hours?

14 **A.** I do not know how long the interview lasted. But I am
15 aware that it occurred at his house, yes.

16 **Q.** And it -- and it was an extensive interview, wasn't it?

17 **A.** Again, I was not there for the interview. I do not
18 know how long it lasted.

19 **Q.** And you are aware of the fact that following that
20 interview, Mr. Yoshida -- the interview of himself,
21 Mr. Yoshida led the Justice Department and FBI to one of his
22 coworkers that they were interested in speaking to?

23 MS. MANSCHRECK: Objection. Basis.

24 BY MR. SQUERI:

25 **Q.** If you're aware.

1 THE COURT: Sustained. You correct -- you amended
2 your question.

3 MR. SQUERI: Yes.

4 THE COURT: All right.

5 BY MR. SQUERI:

6 Q. Were you aware of the fact that Mr. Yoshida led the
7 Justice Department and FBI to one of his coworkers that they
8 were interested in talking to on May 31, 2012?

9 A. I was not aware of that, no.

10 Q. Was one of his coworkers interviewed on that day as
11 well?

12 A. Yes.

13 Q. And were you aware of the fact that the company's
14 attorney, following -- let me back up a second.

15 On May 31st, 2012, grand jury subpoenas were also
16 served on Mr. Yoshida and his employer; is that correct?

17 A. I think so.

18 MS. MANSCHRECK: Objection. Basis.

19 THE COURT: Can you rephrase your question?

20 BY MR. SQUERI:

21 Q. Are you aware of the fact that on May 31, 2012, grand
22 jury subpoenas were served on Mr. Yoshida and his employer
23 by -- and his employer here in the United States, on or
24 about May 31?

25 A. I believe so, yes.

1 Q. And even after the service of those grand jury
2 subpoenas, you did not become aware of any indication that
3 Mr. Yoshida had made any travel arrangements to leave the
4 United States; is that correct?

5 A. That's correct.

6 Q. And were you aware that as of that point in time, the
7 company's attorney had told DOJ that it was not sending
8 people home who appeared to be subjects of the
9 investigation?

10 MS. MANSCHRECK: Objection. No basis.

11 THE COURT: Sus- -- you asked was he aware?

12 MR. SQUERI: Yes.

13 THE COURT: Overruled.

14 THE WITNESS: I'm sorry, could you repeat the
15 question?

16 BY MR. SQUERI:

17 Q. Were you aware that the company's attorneys, that is,
18 the attorneys for Usa here in the United States told DOJ
19 that it was not sending people back to the Uni- -- back to
20 Japan who had been identified as subjects of the
21 investigation?

22 MS. MANSCHRECK: Objection. It assumes facts that
23 are not in the record, and that appear to be misstatements
24 of fact.

25 THE COURT: Overruled. I am going to let him

1 answer if he knows the answer.

2 THE WITNESS: I was not aware.

3 BY MR. SQUERI:

4 Q. Were you aware of any representations made by the
5 company's lawyers to DOJ regarding whether or not it was
6 sending people back to Japan?

7 A. No, I was not.

8 Q. Now, Agent Brown, let me refer you to page 5 of your
9 affidavit.

10 Do you see the summary there found in the first full
11 paragraphs that begin on that page that relate to certain
12 matters that you said were discussed during a phone
13 conversation involving CW-2 and Mr. Yoshida on May 30, 2012?

14 A. The first full paragraph on the page?

15 Q. Yes.

16 THE COURT: What's the first word of the
17 paragraph?

18 MR. SQUERI: Okay. I'm going to refer him to
19 actually the third paragraph on that page, Your Honor, which
20 is referred to by the government.

21 BY MR. SQUERI:

22 Q. It says, quote, "Yoshida informed CW-2 that he would
23 like to continue making these arrangements between the two
24 companies, but that Company A has refused to do so." Closed
25 quote.

1 Do you see that?

2 A. Yes.

3 Q. That was included in your affidavit?

4 A. Yes.

5 Q. Just to be clear, that's not a quote that you took from
6 the transcript, it's your attempt to characterize or
7 paraphrase what was being said during that conversation; is
8 that correct?

9 A. That's correct.

10 Q. The government seems to be relying on this observation
11 by you to say somehow Mr. Yoshida is expressing a desire to
12 continue illegal conversations.

13 Other than what you heard in this phone conversation,
14 do you have any basis for believing that Mr. Yoshida was
15 presently engaged in any attempts to violate United States
16 law here in 2012?

17 A. Other than the conversation in this telephone call, is
18 that what you said?

19 Q. Yes, that's -- that's right.

20 A. No, I do not have any other information that
21 Mr. Yoshida was trying to violate U.S. law in 2012.

22 Q. And either in the last year or during the prior five
23 years in which he worked here in the United States, you
24 haven't identified any conduct on his part occurring here in
25 the United States relating to a violation of U.S. law?

1 MS. MANSCHRECK: Objection, Your Honor. Again, no
2 basis.

3 MR. SQUERI: Your Honor, they've tried -- the
4 government has tried to paint a picture that my client was
5 somehow trying to initiate collusive conversations here in
6 the United States recently. It's a completely false
7 premise. It's not supported by what's in the transcript.
8 And I want to -- I'd like to explore whether or not there's
9 any basis whatsoever for the government to have made that
10 assertion.

11 THE COURT: Do you want to respond?

12 MS. MANSCHRECK: Your Honor, it's argumentative
13 and he's not presenting any alternative version of what was
14 said in that transcript other than what you have before you.
15 I don't -- I don't see any basis -- any factual basis for
16 contesting that particular claim.

17 THE COURT: Overruled. I'm going to let you
18 proceed.

19 MR. SQUERI: Thank you.

20 BY MR. SQUERI:

21 Q. Agent, do you recall the question I'd asked you?

22 A. No, sir, I do not.

23 Q. I'm going to have to remind myself for a moment.

24 A. No problem.

25 Q. Agent Brown, are you aware of any evidence that my

1 client, Mr. Yoshida, has attempted to engage in any
2 collusive conduct while here in the United States, either in
3 the past year or in the prior five-year period when he was
4 here in the country?

5 A. I'm sorry, what -- the prior five-year period, what
6 time period are you speaking about?

7 Q. I am speaking of 1997 to 2003, sir, just to be clear.
8 Sorry.

9 A. So the time in the '90s and in 2012, is that the time
10 frame? I'm sorry.

11 Q. Yes. Are you aware of any collusive conduct which
12 might be characterized as collusive conduct on his part
13 during any of the time that he was here in the United
14 States?

15 MS. MANSCHRECK: Objection, Your Honor. Number
16 one, it's a compound question. It's difficult to answer
17 between this 1998 to 2003 period, and then the more recent
18 period. The witness has already answered that the statement
19 from 2012 about a desire to continue those agreements had
20 been made.

21 The question should, at the very least, be broken
22 up.

23 THE COURT: Can you do that?

24 MR. SQUERI: I'll break the question down.

25 THE COURT: Thank you. Sustained. Your objection

1 is sustained, and I ask you to break up the question.

2 MR. SQUERI: I will.

3 BY MR. SQUERI:

4 Q. Agent Brown, are you aware of any activities on the
5 part of Mr. Yoshida, my client, over the past year, where he
6 has, in fact, attempted to engage in collusive conduct in
7 the United States?

8 THE COURT: And I believe you asked that question.

9 MR. SQUERI: I was trying -- I was trying to -- I
10 was just breaking it down. I -- okay.

11 THE COURT: You can answer.

12 THE WITNESS: Okay. Outside of this telephone
13 conversation that you referenced the first time, no, I am
14 not aware of any other information.

15 BY MR. SQUERI:

16 Q. Let's go back to any other time when Mr. Yoshida was
17 here in the United States.

18 MS. MANSCHRECK: Objection. Relevance.

19 THE COURT: Overruled. I'm going to let him
20 answer that.

21 THE WITNESS: Which time?

22 THE COURT: 1997 to 2003.

23 BY MR. SQUERI:

24 Q. 1990 -- yeah, 1997 or 1998 to 2003, or any other time
25 when he was here in the United States, are you aware of any

1 conduct, and I'm excluding the last year to be -- to be
2 clear, are you aware of any conduct that Mr. Yoshida has
3 engaged in here in the United States in violation of U.S.
4 law?

5 And I'm excluding that last one-year period. I'm not
6 trying to ask the same question again.

7 **A.** I'm having a difficult time answering that question.
8 I'm aware of several traffic violations that Mr. Yoshida had
9 here in the United States. And I don't want to assume that
10 you mean something other.

11 **Q.** With the exception of traffic violations.

12 **A.** Okay. The time period 1998 to 2003, while he was here
13 in the United States, I cannot recall off the top of my head
14 without reviewing all of my documents that I -- that there
15 is any information of violation of law while he was here.
16 I'm sorry, that's the best I can do.

17 **Q.** And going back to this phone call that Mr. Yoshida had
18 with CW-2 on May 30, 2012, that call did not come about upon
19 the initiative of Mr. Yoshida, did it?

20 **A.** If your question is how the call started, CW-2 first
21 reached out to Mr. Yoshida.

22 **Q.** And it was CW-2 who first brought up prior
23 conversations that had taken place in Japan during this
24 telephone conversation; isn't that correct?

25 **A.** Without reviewing the draft transcript, I can't answer

1 that question.

2 **Q.** Well, is it fair to say that the conversations that
3 were referred to during this con- -- during this phone call
4 were all to have taken place in Japan, not the United
5 States?

6 MS. MANSCHRECK: Objection. Basis.

7 THE COURT: Do you want to respond?

8 MR. SQUERI: Your Honor, the witness has signed an
9 affidavit talking about what occurred during this call
10 he's -- he's attempted to summarize and characterize. I
11 think it's appropriate cross-examination to ask him a
12 question of this nature.

13 THE COURT: Overruled. You can answer, if you
14 know.

15 THE WITNESS: Your question again, sir? I'm
16 sorry.

17 BY MR. SQUERI:

18 **Q.** And the conversations that were referenced during this
19 telephone conversation on May 30, 2012 between Mr. Yoshida
20 and CW-2 were conversations that were to have taken place in
21 Japan, not the United States; is that correct?

22 **A.** Again, without reviewing the draft transcripts, that's
23 difficult to answer, but I believe that that's correct, yes.

24 **Q.** And the transcript, in some respects, speaks for
25 itself. But you -- you cannot say here today whether or not

1 it was Mr. Yoshida who initiated any conversation about
2 those prior discussions in Japan?

3 MS. MANSCHRECK: Objection. Your Honor, I think
4 we're -- we're getting pretty far afield of the bond
5 modification issue. It appears to me that counsel is
6 essentially arguing that because of -- he may be able to
7 show that conduct occurred in Japan that was nevertheless in
8 violation of the laws of the United States, and there's no
9 dispute regarding that. We do seem to be getting quite far
10 afield of the issue of whether the defendant is going to
11 appear for future court hearings, and I'd respectfully
12 request that the examination be limited.

13 MR. SQUERI: Your Honor, the government seems to
14 want to have its cake and eat it too. They want to make
15 assertions in their brief suggesting that Mr. Yoshida was
16 somehow ready, able and willing to start engaging in
17 antitrust violations here in the United States, and the
18 record does not support that.

19 And I think it's -- it's certainly appropriate
20 cross-examination for this witness to see whether or not
21 there's any evidence that -- that they have that goes beyond
22 that point, that goes beyond what's in this conversation, or
23 whether or not he's aware of any initiative taken by my
24 client in this area.

25 THE COURT: Can you simply ask him that question?

1 MR. SQUERI: Your Honor, I have been trying to ask
2 those questions, and we've had repeated objections from the
3 Department of Justice. I did ask -- may I have the question
4 reread back? Because I -- no? Okay.

5 I'll rephrase the question, Your Honor --

6 THE COURT: All right, thank you.

7 MR. SQUERI: -- to help move things along.

8 BY MR. SQUERI:

9 Q. Agent, are you aware of whether or not Mr. Yoshida
10 initiated with CW-2 any conversation about their prior
11 discussions in Japan?

12 MS. MANSCHRECK: Objection, Your Honor.

13 THE COURT: During -- can you limit that to a time
14 period? What time period are we talking about?

15 MR. SQUERI: During the phone conversation.

16 THE COURT: All right. Overruled. You can
17 answer.

18 THE WITNESS: I do not recall how the conversation
19 began, but I recall a conversation back and forth with both
20 parties, CW-2 and Mr. Yoshida discussing prior conversations
21 and meetings that they had about that behavior.

22 BY MR. SQUERI:

23 Q. During that conversation, did Mr. Yoshida seek to
24 engage CW-2 in any conversation about pricing?

25 A. Current pricing, is that your question?

1 Q. Yes.

2 A. Not to my knowledge, no.

3 Q. Did he attempt to enter into any type of collusive
4 agreement during that phone conversation?

5 A. Beyond his assertion that he would like to continue but
6 Company A would not allow it, I am not aware of any other
7 instance in the conversation, no.

8 Q. And there was a comment made in passing, he didn't ask
9 the person from CW-2 to engage in further collusive
10 conversations, did he?

11 MS. MANSCHRECK: Objection. Argumentative.

12 THE COURT: Overruled.

13 MS. MANSCHRECK: Objection. No basis.

14 THE COURT: Overruled. You can answer it.

15 MS. MANSCHRECK: Your Honor, the contention is
16 that the comment is made in passing. There is no basis in
17 this record upon which to assume that fact.

18 THE INTERPRETER: Interpreter is not able to hear
19 the prosecutor, Your Honor.

20 THE COURT: Oh. The court would agree with you
21 that there's no basis for determining whether or not the
22 comment was made in passing.

23 So can you rephrase your question?

24 MR. SQUERI: Sure, Your Honor.

25 BY MR. SQUERI:

1 Q. Agent, did Mr. Yoshida, during that telephone
2 conversation, ask CW-2 to engage in any form of collusive
3 behavior?

4 A. Mr. Yoshida -- again, without reviewing the draft
5 transcript in front of me here, Mr. Yoshida made a comment
6 about wanting to continue, but not being able to.

7 Beyond that comment, I am not aware of any other
8 instance of attempting to have collusive behavior during
9 that conversation.

10 Q. And he didn't bring up prices, he didn't bring up
11 competition, he didn't bring up anything concerning the
12 business between those two companies, did he?

13 MS. MANSCHRECK: Objection, Your Honor. I think
14 counsel has made his point and it is cumulative.

15 THE COURT: Sustained.

16 BY MR. SQUERI:

17 Q. Agent Brown, do you see there on pages 3 and 4 of your
18 affidavit, you talk about certain contacts and
19 communications, you say, that DOJ has been told about
20 concerning requests for quotations made by Honda; is that
21 correct?

22 A. One moment, please. Let me review the tran- --

23 Q. Please do that.

24 A. Okay. What was your question again? I'm sorry.

25 Q. If you look at pages 3 and 4 of your affidavit, you

1 talk about certain contacts and communications that you say
2 DOJ has been told about concerning certain requests for
3 quotations made by Honda; is that correct?

4 A. Yes.

5 Q. Now, just to be clear, none of the communications you
6 were referring to are supposed to have taken place in the
7 United States; is that correct?

8 A. I believe that is correct, yes.

9 Q. All of these communications were to have taken place
10 within the sovereign territory of Japan; isn't that correct?

11 MS. MANSCHRECK: Objection. I think that counsel
12 would need to restate that and tie it at least to the
13 affidavit in order to have a basis for that.

14 MR. SQUERI: Your Honor, I'm going to object. I
15 mean, these repeated interruptions by DOJ with what I would
16 submit are in many cases frivolous and unnecessary
17 objections is --

18 THE COURT: Overruled. You may -- overruled.

19 BY MR. SQUERI:

20 Q. And all of these communications that you refer to here
21 were to have taken place within the sovereign territory of
22 Japan; isn't that correct?

23 A. I believe that's correct, yes.

24 Q. And one of the things you disclose here in your
25 affidavit is that there was supposed to have been

1 discussions in which Mr. Yoshida was involved with CW-1
2 regarding the request for quotation for the 2006 Honda
3 Civic; is that correct?

4 A. Yes.

5 Q. Did you know that at that point in time, Mr. Yoshida
6 wasn't even employed in a position where he had
7 responsibility for Honda business and sales?

8 MS. MANSCHRECK: Objection, Your Honor. Again --

9 THE COURT: Sustained.

10 MS. MANSCHRECK: -- at this point we're going
11 far --

12 THE COURT: Sustained.

13 MS. MANSCHRECK: -- afield and --

14 THE COURT: Sustained.

15 BY MR. SQUERI:

16 Q. Okay. Well, let me -- let me just ask this question:

17 Agent Brown, are -- you've been working on this
18 investigation. Have you become familiar with the process
19 that's followed in connection with the Honda request for
20 quotation when it is looking to buy anti-vibration rubber
21 products?

22 A. Generally speaking, yes.

23 Q. And are you aware of the fact that there are various
24 stages in this process when both specifications for a
25 product and prices are changed and requoted?

1 **A.** Yes.

2 **Q.** And are you aware of the fact -- are you aware of
3 whether or not any prices that may or may not have been
4 discussed -- may have been discussed during any of these
5 conversations you allude to were actual prices that were
6 charged to Honda?

7 MS. MANSCHRECK: Objection, Your Honor. Again, if
8 the concern is about the weight of the evidence, at this
9 point this is going much further afield than that. And as
10 we -- as has been discussed before, and as Your Honor noted
11 at the beginning of this hearing, this should be quite
12 limited to the issue of the bond modification hearing, and
13 counsel has taken a lot of liberties at this point.

14 THE COURT: Sustained.

15 MR. SQUERI: Your Honor, if you'll just allow me
16 just a little bit of latitude, and I'll be very -- I'll be
17 very brief here.

18 BY MR. SQUERI:

19 **Q.** Are you aware of any analysis done by the United States
20 as to whether and to what extent United States commerce was
21 affected by any of the conduct that you refer to in -- in
22 your affidavit?

23 MS. MANSCHRECK: Objection, Your Honor.

24 THE COURT: Sustained. I don't think that has any
25 bearing upon our detention issue.

1 BY MR. SQUERI:

2 Q. Agent Brown, are you aware of the fact that Mr. Yoshida
3 was required to surrender his passport when he was arrested
4 here -- when he was arrested in Columbus some 50 days ago;
5 is that correct?

6 A. Yes.

7 Q. And without this passport, he can't get on a plane and
8 travel back to Japan; isn't that correct?

9 A. Without any passport, he cannot get on a plane to
10 travel back to Japan, that's correct.

11 Q. Is it -- Agent Brown, are you -- do you have any
12 specific awareness of any black market that exists for
13 Japanese passports in the United States?

14 A. Do I have personal knowledge of a black market? No.
15 Am I aware that it's possible for foreign nationals to go to
16 an embassy and get a new passport? Yes.

17 Q. I'll get to that point in a second.

18 A. Okay.

19 Q. But just -- just to be clear, you have no information
20 or knowledge about a black market for passports, Japanese
21 passports here in the United States, do you?

22 THE COURT: He already answered that.

23 BY MR. SQUERI:

24 Q. Agent, have you informed any of the Japanese consulates
25 or the embassy about the fact that Mr. Yoshida's passport

1 was surrendered because of the pending criminal charges
2 against him?

3 A. No, I have not.

4 Q. Is there anything to prevent you from doing so?

5 A. Not that I'm aware of, no.

6 Q. Did you realize that if the United States Government
7 told the Japanese consulate about this and the embassies,
8 they wouldn't issue him a new passport --

9 MS. MANSCHRECK: Objection.

10 BY MR. SQUERI:

11 Q. -- if he applied for one?

12 MS. MANSCHRECK: Objection. That assumes a fact
13 that is not in the record.

14 MR. SQUERI: Your Honor, I intend to proffer
15 evidence to show that that is, in fact, the case. And I'd
16 just like to know -- the government here has taken the
17 position expressly in its brief that these conditions are
18 justified because my client can somehow easily go and obtain
19 a passport. That is simply not accurate.

20 And I'd like to probe whether or not the
21 government does, in fact, have any -- any evidence to
22 support that fact. And I think it's appropriate to ask him
23 whether or not he knows that such a passport can and cannot
24 be obtained from a consulate.

25 THE COURT: You can ask him whether he knows.

1 THE WITNESS: I'm sorry, could you rephrase your
2 question -- or repeat your question?

3 BY MR. SQUERI:

4 Q. Do you know, Agent, whether or not a Japanese consulate
5 would issue a passport to Mr. Yoshida if it were told that
6 he was required to surrender that passport in connection
7 with a criminal proceeding like this?

8 A. I do not know.

9 Q. And you are aware of the fact that the Japanese and
10 United States antitrust authorities have established a
11 cooperative relationship when it comes to enforcing
12 competition in antitrust laws; isn't that correct?

13 MS. MANSCHRECK: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. SQUERI:

16 Q. Are you aware of the fact that the United States has an
17 extradition treaty with Japan?

18 A. Yes.

19 MR. SQUERI: I have -- I have no further
20 questions, and I'd like to turn to the evidence that I
21 intend to proffer as well, Your Honor.

22 THE COURT: Before I do so, I would give
23 Ms. Manschreck an opportunity to do any direct that she
24 chooses.

25 MS. MANSCHRECK: Yes, Your Honor, I would.

1 CROSS-EXAMINATION OF KEVIN BROWN

2 BY MS. MANSCHRECK:

3 Q. Good afternoon, Agent Brown.

4 A. Good afternoon.

5 THE INTERPRETER: Interpreter is not able to hear.
6 Sorry.

7 THE COURT: Please speak directly into the
8 microphone.

9 MR. SQUERI: You have to speak right into the
10 microphone there.

11 BY MS. MANSCHRECK:

12 Q. Agent Brown, what is your educational background?

13 A. I have a college degree in mathematics.

14 Q. And I believe you said in your -- during direct
15 examination, that you're employed by the FBI in Cleveland;
16 is that correct?

17 A. Yes.

18 Q. And what is your title there?

19 A. Special agent.

20 Q. And how long have you worked at the FBI?

21 A. Approximately ten years.

22 Q. And what sort of investigations have you been involved
23 in at the FBI?

24 A. White collar crime investigations, including antitrust,
25 public corruption, some bankruptcy fraud, and organized

1 crime matters as well.

2 Q. And approximately how many investigations have you been
3 involved in over the course of those ten years?

4 A. By that do you mean that I was the main case agent on?

5 Q. That you had any investigative role in.

6 A. I'm sorry, I have no idea. A roundabout guess, I'd say
7 50 that I had some sort of involvement in. That's the best
8 I can do sitting here.

9 Q. And I believe you stated that you've been working on
10 this particular investigation since the fall of last year;
11 is that correct?

12 A. That's correct.

13 Q. And what sort of activities have you conducted in the
14 course of this investigation?

15 A. Interviews, consensual monitoring of a telephone call,
16 grand jury subpoenas.

17 Q. Can you understand Japanese?

18 A. No.

19 Q. And so when you're conducting these investigative
20 activities and they involve Japanese language, do you rely
21 on interpreters?

22 A. Yes.

23 Q. And with respect to the affidavit that was submitted
24 with the complaint in this case, does it reflect the
25 entirety of the information collected during your

1 investigation?

2 **A.** No.

3 **Q.** And is the investigation ongoing?

4 **A.** Yes.

5 **Q.** You had mentioned the recorded phone call on direct
6 examination. When was that phone call made?

7 **A.** I believe it was May 30th of 2012. It's -- I'm sorry,
8 I'm just looking through the affidavit.

9 Yes, May 30th, 2012.

10 **Q.** And were you present for the duration of the phone
11 call?

12 **A.** Yes.

13 **Q.** And what language was the phone call in?

14 **A.** Japanese.

15 **Q.** And the person who made the phone call, how -- how do
16 you know that person?

17 **A.** The cooperating witness from Company A in this
18 investigation.

19 **Q.** And is Company A a competitor with the defendant's
20 company?

21 **A.** Yes.

22 **Q.** And who is the phone call made to?

23 **A.** Mr. Yoshida.

24 **Q.** Could you understand what was going on while the call
25 was being made?

1 **A.** No.

2 **Q.** I believe you said on direct examination that there was
3 a debriefing after the phone call; is that correct?

4 **A.** Yes.

5 **Q.** And during that debriefing, did you have a chance to
6 talk to the caller about what had happened in the call?

7 **A.** The CW-2? Through the interpreter, yes.

8 **Q.** And is the transcript that you relied on in support of
9 the affidavit in support of this complaint consistent with
10 what you heard during that debriefing?

11 MR. SQUERI: Objection. Leading.

12 THE COURT: Sustained.

13 BY MS. MANSCHRECK:

14 **Q.** You said before that what you heard during this
15 debriefing was a summary of what had happened during the
16 call; is that correct?

17 **A.** A very general summary, yes.

18 **Q.** Was there any mention in that debriefing about plans to
19 return to -- the defendant's plans to return to Japan?

20 **A.** I don't recall. There may have been mention of travel.
21 I don't recall if it was specific as to why he was
22 returning. That's a -- I really don't recall.

23 **Q.** So you don't recall whether there was mention of why
24 there would be a return, but there was mention of there
25 being a planned return?

1 **A.** I'm -- I'm confident that there wasn't mention of why.
2 I'm not as confident as to whether or not he mentioned that
3 there would be travel. I -- I believe he did.

4 **Q.** Now, after the call was made, you were -- there was a
5 transcript prepared, correct?

6 **A.** Of the call, yes.

7 **Q.** And you've had a chance to review that transcript,
8 correct?

9 **A.** Yes.

10 **Q.** Is that transcript consistent with what was said to you
11 by the caller in that debriefing?

12 MR. SQUERI: Objection, Your Honor. Asked and --
13 previously asked and sustained. Leading.

14 THE COURT: Sustained.

15 BY MS. MANSCHRECK:

16 **Q.** Was there anything that was said in the debriefing that
17 is inconsistent with what you saw in the transcript?

18 **A.** No, the debriefing was very general. The transcript is
19 obviously much more detailed.

20 **Q.** Are you aware of the citizenship of the defendant?

21 **A.** Yes. Japanese. A citizen of Japan.

22 **Q.** And are you aware whether he has any family members?

23 **A.** I believe he does, yes. I believe he's married.

24 **Q.** Are you aware where his wife resides?

25 **A.** My understanding is it's in Japan.

1 MR. SQUERI: Objection. Foundation.

2 THE COURT: Sustained.

3 MS. MANSCHRECK: Your Honor, I'm just asking the
4 witness what he's aware of, where his -- whether he's aware
5 where the wife resides.

6 MR. SQUERI: Same objection. No foundation that
7 he would have a basis for personal knowledge.

8 THE COURT: Do you want to rephrase your question?

9 BY MS. MANSCHRECK:

10 Q. In the course of this investigation, have you had a
11 chance to review visa documentation associated with this
12 defendant?

13 A. Yes.

14 Q. And according to that visa documentation, is it your
15 understanding that the defendant was -- came to the United
16 States with his wife?

17 A. I'm sorry.

18 Q. And I'll rephrase.

19 Are you aware of more than one visit by the Uni- -- by
20 the defendant to the United States?

21 A. Yes.

22 Q. And one of those visits, I believe on direct
23 examination we discussed was between 1998 and 2003; is that
24 correct?

25 A. Yes.

1 Q. And the other is the one that has him here now from --
2 that started in August of 2011; is that correct?

3 A. Correct.

4 Q. With respect to the visit in 1998 through 2003, did you
5 have a chance to review the visa documentation associated
6 with that visit?

7 A. Yes.

8 Q. And according to that visa documentation, are you aware
9 whether the defendant brought his wife with him for that
10 visit?

11 MR. SQUERI: Objection. Leading. If they have
12 the documentation, they can -- they can show it to us. It's
13 putting witness in the -- words in the witness's mouth as to
14 what's included in another document.

15 THE COURT: Overruled.

16 THE WITNESS: I do not recall.

17 BY MS. MANSCHRECK:

18 Q. And with respect to his more recent visit in August of
19 2011, do you recall any information about whether he was --
20 he brought his wife to the United States?

21 A. I don't believe he did.

22 Q. You do not believe he brought his wife to the United
23 States, or you do not believe he provided that information?

24 A. My fault. I do not believe his wife traveled with him.

25 Q. Are you aware of where the defendant's permanent

1 residence is?

2 A. In the United States or in Japan, is that -- is that
3 what you mean?

4 Q. Well, that's the question, is where his -- are you
5 aware of where his permanent residence is?

6 A. Yes, Japan.

7 Q. Are you aware of whether the defendant owns any housing
8 in the United States?

9 A. I am not aware.

10 Q. Are you aware of who owns the housing that the
11 defendant currently resides in in the United States?

12 A. I believe it's his employer.

13 Q. On direct examination, Mr. Squeri had asked you some
14 questions regarding the am- -- the leniency program with the
15 Antitrust Division.

16 You had mentioned on direct examination that there are
17 certain conditions that are required for a leniency
18 applicant to receive non-prosecution.

19 Could you explain what some of those conditions are?

20 A. Um --

21 MR. SQUERI: Objection. Foundation. The
22 government previously questioned this witness's competence
23 to get into this area. It seems unfair for them now to lead
24 him along in another line of questioning.

25 THE COURT: I think we're going far afield here

1 again, so I'll sustain the objection.

2 BY MS. MANSCHRECK:

3 Q. Is it your understanding that in order to receive
4 non-prosecution according to the leniency program's terms,
5 one would have to provide truthful cooperation?

6 MR. SQUERI: Objection.

7 THE COURT: Sustained.

8 BY MS. MANSCHRECK:

9 Q. Are you aware of prosecutions of companies by the
10 Antitrust Division?

11 A. Any prosecution of any company?

12 Q. Yes.

13 A. Yes.

14 Q. And is it your understanding that based on the facts
15 alleged in your affidavit, the defendant's company could
16 potentially be prosecuted?

17 A. Yes.

18 Q. Do you recall what, if any, monitoring of the
19 defendant's travel plans were in effect prior to the
20 issuance of the complaint and the arrest warrant?

21 A. Yes.

22 Q. Could you describe for the court how that monitoring
23 works?

24 A. Prior to the arrest warrant, my understanding with
25 assistant with other agents -- assistance from other agents

1 was that a representative from another government agency
2 essentially checked international reservations each day to
3 see if Mr. Yoshida had made any.

4 Q. How frequently during a day would those reservations be
5 checked?

6 A. My understanding was once.

7 Q. Is it your understanding that if those reservations
8 were checked, for example, early in the day, and the
9 defendant then purchased a ticket later in the day, you
10 would not have been alerted of that reservation?

11 MR. SQUERI: Objection, Your Honor. Calls for
12 speculation. No foundation. There's no evidence that there
13 would have been anything of the kind done here, and it's
14 just asking the witness to speculate about something that is
15 purely argumentative.

16 MS. MANSCHRECK: Your Honor, the foundation is
17 laid by the witness's testimony that it's only checked once
18 a day.

19 THE COURT: Overruled.

20 THE WITNESS: I'm sorry, could you repeat your
21 question?

22 BY MS. MANSCHRECK:

23 Q. Is it your understanding that were the reservations
24 checked early in a day and the defendant were to later in
25 the day purchase a ticket for travel outside the United

1 States, that you would not be alerted to that, assuming that
2 it was for same-day travel?

3 A. My understanding --

4 MR. SQUERI: Objection. Foundation as to whether
5 or not the witness knows that could be picked up in the --
6 in the check of reservations. I -- we need to have some
7 foundation that he's in the position to even know that.

8 THE COURT: Sustained.

9 BY MS. MANSCHRECK:

10 Q. Is it your understanding that the monitoring system
11 that we have been discussing is foolproof?

12 A. By "foolproof," you mean -- if you mean 100 percent
13 accurate all the time, no, it's not.

14 Q. And can you explain an example of how it's not accurate
15 100 percent of the time?

16 A. Through my conversation with agents that we have
17 stationed at various airports throughout the country, I
18 contacted one of them, and their -- based on different --
19 obviously, different circumstances; in this case, we asked,
20 we, the FBI, the agent that I contacted, Customs and Border
21 Patrol, I believe it was, to access one of their systems to
22 check for international flight reservations by Mr. Yoshida.

23 My understanding is that that was done approximately
24 once a day, at best. And if reservations were made early
25 and he traveled out later that day, again, my understanding

1 is it would not have been picked up by the system until the
2 following day when they checked again.

3 Q. And similarly, if the defendant were to travel to
4 Mexico or to Canada by car, is it your understanding that
5 law enforcement would receive notification in time to
6 intercede?

7 MR. SQUERI: Objection. Foundation.

8 THE COURT: Sustained.

9 BY MS. MANSCHRECK:

10 Q. In your conversations with other agents and with border
11 patrol, have you become familiar with any system in place
12 with respect to the borders with Mexico and Canada?

13 A. Yes. My conversations were with another FBI agent, not
14 Customs and Border Patrol.

15 Q. And based on that conversation and -- what is your
16 understanding as far as notifications that would be in place
17 in the event that the defendant were to travel to either
18 Mexico or to Canada?

19 A. Are you referring to land crossings?

20 Q. Yes.

21 A. The system we were referring early -- referring to
22 earlier prior to the arrest warrant being issued, there was
23 no way for me to be notified about land crossings.

24 Q. And in the event that the defendant were to travel to
25 Mexico or to Canada, are you aware of any monitoring system

1 that would allow you to intercede in the event that he then
2 made a reservation to Japan from either of those
3 companies -- countries?

4 A. Once they were in those countries?

5 Q. Yes.

6 A. No, I'm not.

7 MS. MANSCHRECK: Just one moment.

8 BY MS. MANSCHRECK:

9 Q. In your affidavit, you mentioned a variety of models of
10 vehicles, correct?

11 A. Several, yes.

12 Q. Is it your understanding that those vehicles are sold
13 in the United States?

14 A. Yes.

15 MS. MANSCHRECK: I have nothing further, Your
16 Honor.

17 MR. SQUERI: I just have a few questions.

18 THE COURT: Briefly.

19 MR. SQUERI: Yes, I will be brief, Your Honor.

20 REDIRECT EXAMINATION OF KEVIN BROWN

21 BY MR. SQUERI:

22 Q. Agent, you were asked some questions about
23 Mr. Yoshida's personal situation with his family.

24 Are you aware of him having a wife and two children?

25 A. I'm aware -- I believe that he's married, yes. I was

1 not aware that there were two children. I think I believed
2 there was one. But that's --

3 Q. You have not conducted any independent investigation
4 into his personal situation, correct?

5 MS. MANSCHRECK: Objection.

6 THE COURT: Overruled.

7 MS. MANSCHRECK: Objection.

8 THE COURT: I think that's an appropriate
9 question.

10 MS. MANSCHRECK: I just -- just for vagueness.
11 I'm not quite clear what he means by "personal situation."

12 MR. SQUERI: Your Honor, the witness can say
13 whether he understands the question. I think the objection
14 is not appropriate.

15 THE COURT: I overruled it.

16 MR. SQUERI: Thank you.

17 THE WITNESS: Part of my understanding of his
18 marital situation is that when Agent Sante arrived at his
19 house to do the interview, he was, I think, Skyping with his
20 wife in Japan.

21 And I believe I noticed on the visa application
22 that there was mention of his wife, having a wife. That's
23 the extent of my knowledge.

24 BY MR. SQUERI:

25 Q. And you are aware of the fact that he has been employed

1 in the same -- with the same company for over 30 years,
2 aren't you?

3 A. I think give or take a few, yes, he's been with this
4 company a very long time, yes.

5 Q. His entire career?

6 A. I don't know that. I know a long time.

7 Q. Well, and you've also become familiar with the
8 operations here in the United States, and they're very
9 substantial, aren't they?

10 A. For his company, is that what you're referring to?

11 Q. Yes, employing 500 or more people.

12 A. I believe so, yes.

13 Q. And you are -- you made mention of your experience in
14 other antitrust matters in response to questions from the
15 government.

16 In how many cases were you the lead case agent, if you
17 can recall here?

18 A. For antitrust investigations?

19 Q. Yes. Yes, sir.

20 A. Two or three.

21 Q. And the government asked you some questions about the
22 company's exposure here.

23 Are you familiar with the fact that typically companies
24 that become subject to antitrust investigations look to
25 cooperate with the government, in your experience?

1 MS. MANSCHRECK: Objection.

2 THE COURT: Sustained. His experience is two or
3 three cases where he's been lead agent.

4 BY MR. SQUERI:

5 Q. Well, if we expand it to any of the cases that he's had
6 experience with, are you aware that companies typically do
7 look to cooperate with the government under those
8 circumstances?

9 THE WITNESS: I'm aware that some do, yes.

10 BY MR. SQUERI:

11 Q. And that it is in the company's interest to have its
12 employees, like Mr. Yoshida, cooperate with the government
13 under those circumstances?

14 A. I couldn't say. I think it would depend on when they
15 were involved in the case.

16 Q. You were asked some questions about this airline
17 scheduling.

18 Just to be clear, do you have any information that
19 Mr. Yoshida attempted to leave the United States any time
20 after May 30, 2012?

21 A. No.

22 Q. And there's no evidence that you are aware of that he
23 somehow made reservations later in the day with the -- after
24 you had -- the FBI had gone through its check of the
25 reservation system?

1 **A.** I believe I answered, I'm not aware of him making any
2 reservations.

3 **Q.** And I asked you about contacting U.S. consulates here
4 in the United States about the sit- -- excuse me, Japanese
5 consulates here in the United States.

6 Have you attempted to contact Japanese consulates in
7 Canada or in Mexico?

8 **A.** No.

9 **Q.** And are you aware of whether or not Mr. Yoshida would
10 need a passport in order to travel from Mexico or Canada to
11 Japan?

12 **A.** I believe he would.

13 **Q.** And just to be clear, do you or do you not recall the
14 details of the debriefing that you conducted of CW-2 after
15 the telephone conversation on May 30, 2012?

16 **A.** I recall CW-2 indicating that the telephone
17 conversation had discussed various meetings and price
18 discussions that they had had in the past in Japan.

19 I am -- I believe there was discussion during the
20 debriefing about travel, but it's not as clear in my mind as
21 to details about the price discussions and other meetings in
22 Japan.

23 That's the best answer I can give you.

24 **Q.** And it's still your testimony that you do not recall
25 whether he mentioned anything about the JFTC at that time?

1 **A.** I'm sorry, could you repeat that?

2 **Q.** And is it still your testimony that you do not recall
3 whether he mentioned anything about the JFTC during that
4 debriefing?

5 **A.** I don't believe he did mention the JFTC during the
6 debriefing. I think that's what I had said earlier.

7 MR. SQUERI: Give me just one moment, Your Honor.
8 BY MR. SQUERI:

9 **Q.** Was the Department of Justice interpreter present at
10 the time that you were monitoring the telephone call with
11 Mr. Yoshida -- between Mr. Yoshida and CW-2 on May 30, 2012?

12 **A.** No.

13 **Q.** It was a different interpreter?

14 **A.** Correct.

15 **Q.** And did that interpreter tell you anything about a JFTC
16 conversation?

17 **A.** Well, that interpreter translated what CW-2 said, which
18 was what I've already testified to.

19 **Q.** In the debriefing that you mentioned?

20 **A.** Correct.

21 MR. SQUERI: I don't have any further questions,
22 Your Honor. I don't know whether this is a convenient time
23 to break, but I would like to continue my argument and
24 proffer of evidence.

25 THE COURT: All right. Thank you. We will take a

1 break, ten minutes. Okay.

2 Ms. Interpreter, is this an appropriate time to
3 take a ten-minute break?

4 THE INTERPRETER: Yes, Your Honor.

5 THE COURT: All right. Thank you very much. We
6 are in recess for ten minutes.

7 MR. SQUERI: Your Honor, we would excuse the
8 witness.

9 THE COURT: Oh. All right. Thank you.

10 MR. SQUERI: Should we excuse the witness, I
11 should say? I don't want to be presumptuous.

12 UNKNOWN SPEAKER: They're still on the phone.

13 THE COURT: Pardon?

14 (Inaudible.)

15 THE COURT: All right. Agent Brown, you are
16 excused. You may remain if you wish, or you are free to
17 leave.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Thereupon, a recess was had.)

21 THE COURT: -- on the line?

22 THE INTERPRETER: Yes, Your Honor.

23 THE COURT: And the court wants to apologize if
24 the hearing was longer than anticipated. However, we are
25 concerned with very important rights in criminal cases, and

1 so we are not able to accurately -- accurately estimate the
2 length of time that a hearing will last; and certainly, we
3 would apologize for any inconvenience.

4 But in the greater picture, we have to look at
5 protecting the rights of defendants. And so we truly
6 apologize if we went over the estimated time. However, it
7 is beyond our control. We understand that you only have 20
8 minutes remaining, so we will attempt to complete our
9 hearing within 20 minutes.

10 But the court is very concerned that you would be
11 antagonistic toward the courtroom deputy. She has no
12 control over how these hearings go.

13 The lawyers are doing their jobs to represent
14 their clients so that we can achieve a sense of justice, and
15 the court certainly would hope that the interpreting
16 service, which is an important service to us, very difficult
17 to achieve, we rely upon you heavily, but we can't control
18 the length of time that a hearing will take.

19 Our job is to protect the rights of people who
20 appear before us, and we do that in the very best manner
21 that we can. We need your assistance.

22 Is that clear?

23 THE INTERPRETER: Your Honor, I -- I'd like to
24 respond to that.

25 THE COURT: Certainly.

1 THE INTERPRETER: I was originally given an
2 estimate of 60 minutes, and I have been here from 9:00 in
3 the morning Pacific time, and we went on for an hour and a
4 half without any breaks. And I'm willing to accommodate
5 that, Your Honor. But I am a contractor to the court, and I
6 do have another matter that I need to attend to at 11:50.

7 THE COURT: The court understands your time
8 schedule. And so if you have a previous engagement in the
9 next 20 minutes, we anticipate completing the hearing once
10 you give us notice that you have another matter scheduled.
11 I have advised counsel and told them that they must wrap up
12 in the next 20 minutes so that you can leave.

13 However, we do appreciate being cooperative with
14 each branch of the government and the court. And so we all
15 try to work together and accommodate each other.

16 I will be respectful of your schedule. And if
17 indeed we were thoughtless and did not give you a break,
18 certainly the court would not be opposed to an interpreter
19 saying, "Your Honor, I need a break at this time."

20 I know that it's very intense work, and I
21 appreciate that. So anytime we're going over, if you were
22 to say, "I'm sorry, I need a break," that's fine. We all
23 understand that. Okay?

24 THE INTERPRETER: Thank you, Your Honor.

25 THE COURT: All right. We'll now proceed. And

1 I'm going to just limit each side to ten minutes, because
2 that's all we have. Anything more that you want to submit,
3 you can do it by paper. You can file any written arguments
4 that you wish. I would appreciate your making your proffer
5 at this time.

6 MR. SQUERI: Yeah. I'll try to be as quick as
7 possible, Your Honor.

8 First, Your Honor, let me proffer some additional
9 materials to the court. I have a series of documents.

10 May I approach just to hand them to the court?

11 THE COURT: Yes, certainly. Thank you.

12 MR. SQUERI: I won't spend any time going through
13 the detail, but let me tell you what I've handed to you,
14 Your Honor.

15 First is an extradition treaty between the United
16 States and Japan. And I would just note for the record that
17 the United States Justice Department has taken the position
18 that antitrust offenses are extraditable under that treaty.

19 Second is a treaty between Japan and the United
20 States, mutual legal assistance in criminal matters. That's
21 dated August 5, 2003. This is a document that I obtained
22 from the U.S. Justice Department's website.

23 Third is an agreement between the government of
24 Japan and United States regarding cooperation on
25 anticompetitive activities. It's an agreement between the

1 Japanese antitrust authorities and those of the United
2 States.

3 And I also included a couple of page Internet
4 printout that just refers to an Internet -- an international
5 cartel working group, which happens to be co-chaired by the
6 antitrust competition agencies of Germany, the United States
7 and Japan.

8 And my point in presenting these documents is,
9 one, to point out to the court that, in fact, extradition is
10 a possibility. It's the reason why many Japanese
11 individuals have, in fact, surrendered to the United States.

12 And also to point to the cooperative relationship
13 that exists between the government of the United States and
14 Japan.

15 And during my questioning of Agent -- of Agent
16 Brown, I started to get into some statistics regarding the
17 Antitrust Division. You can see that in the last printout
18 that I provided, on pages 4 and 5, where I would have gotten
19 the data that I intended to refer to.

20 In the last five fiscal years, there have been an
21 average of over 120 investigations pending a year that's
22 brought by the Antitrust Division, and charges brought
23 against approximately 316 individuals by the Antitrust
24 Division. And these are usually going to be antitrust
25 prosecutions. There are times when other federal statutes

1 are enforced. But typically, these are antitrust
2 prosecutions.

3 And the point here is that the numerous antitrust
4 prosecutions brought by the Antitrust Division is at most,
5 when you look at -- it's highly extraordinary to impose the
6 conditions of the na- -- of the nature that have been
7 imposed here.

8 Now, we don't --

9 THE COURT: Have you looked at the bond conditions
10 in those cases?

11 MR. SQUERI: What we have done, Your Honor, and --
12 and I need to make sure the court understands that our data
13 is going to be more limited than that -- than that of the
14 Justice Department.

15 But I asked a paralegal to go back three years and
16 look at each of the antitrust prosecutions that could be
17 identified, and we were only able to identify one instance
18 involving a Taiwanese individual, and I would observe Taiwan
19 does not have an extradition treaty with the United States,
20 where electronic monitoring was required.

21 I can represent to the court that it wasn't done
22 in any other instance, that's all -- all that I found.

23 And I can represent to the court that in my years
24 practicing in this area, this is a highly unusual condition
25 to impose.

1 And what I would also proffer to the court is, as
2 the court knows, Mr. Yoshida has willingly surrendered his
3 passport. DOJ has tried to minimize the significance of his
4 doing so, and suggested that he can easily obtain a new
5 passport and flee the country.

6 Your Honor, this is simply not the case. We
7 checked with the Japanese consulate in Detroit in order to
8 see whether or not DOJ's bald assertions could be
9 substantiated, and they can't be.

10 I would proffer to the court that I called the
11 Japanese consulate in Detroit, Michigan. The consulate has
12 responsibility for matters in Michigan and Ohio. I was
13 directed to and spoke with an individual by the name of Jim
14 Fergersky, who is employed by the consulate in the position
15 of security adviser.

16 What I learned from Mr. Fergersky is as follows:

17 One, neither the consulate nor the Japanese
18 government with whom he checked has knowledge of any black
19 market for Japanese passports in the United States.

20 Two, Japanese consulates would not issue a new
21 passport to a Japanese citizen if made aware of the fact
22 that the reason one is needed is because it was surrendered
23 to a U.S. court.

24 Moreover, if a person like Mr. Yoshida were to
25 obtain a new passport by lying that he had, for example,

1 lost one, he would be committing a crime under Japanese law
2 and subject to fine and imprisonment up to five years in
3 Japan, his home country.

4 The important point here, Your Honor, is that by
5 having Mr. Yoshida surrender his passport as has been done
6 here, this is more than enough, in our view, to secure his
7 reporting back to the court and answering to the charges
8 here.

9 Your Honor, we have already addressed the fact
10 that no one was planning to move Mr. Yoshida outside the
11 United States in order to advance any antitrust prosecution.

12 We heard the testimony that there was no
13 indication that he had made reservations, even after the
14 time he was interviewed by DOJ.

15 And the evidence actually indicates anything but a
16 desire to be responsive to U.S. authorities. He con- -- the
17 way he conducted himself on the day that the FBI visited his
18 home is indicative of a person looking -- who is not looking
19 to evade prosecution. He gave the FBI a substantial
20 interview on that day.

21 And the suggestion in the brief -- their brief of
22 the United States that somehow he was looking to engage in
23 new antitrust violations, it's simply not substantiated by
24 the evidence.

25 I won't review the testimony, but there is no

1 evidence that he ever attempted to engage in an antitrust
2 violation here in the United States.

3 And the court sustained my -- the objection of the
4 government when I asked about whether any analysis had been
5 done on impact on U.S. pricing. I asked that question for a
6 very important reason, and that is because this conduct
7 occurred in Japan, there -- the extraterritorial assertion
8 of jurisdiction by the United States must meet certain
9 requirements, including that it did, in fact, have a
10 substantial effect on U.S. commerce.

11 This goes back in jurisprudence of -- to the
12 jurisprudence of Judge Learned Hand in 1945, and is
13 memorialized in the Antitrust Improvements Act --
14 International Antitrust Improvements Act -- excuse me, I've
15 got to restate that, the Foreign Trade Antitrust
16 Improvements Act of 1982, which requires that there be a
17 substantial and direct effect on U.S. commerce.

18 And my point here, Your Honor, is when you look at
19 the strength of the evidence argument made by DOJ, it's not
20 quite that clear. And I know they'll disagree with me, and
21 today is not the day to get into that, but it's not that
22 clear. As a matter of fact, there would be a significant
23 defense.

24 I am going to try to get through this. I'm near
25 the end, Your Honor.

1 Your Honor, very briefly, the government's
2 assertions about the risk of flight with respect to
3 Mr. Yoshida are not supported by the record. He's here in
4 the United States. He will remain in the United States.

5 Counsel for the company is here in the courtroom,
6 can represent to the court that they expect him to stay in
7 the United States if the court wishes to hear from her.

8 And, Your Honor, it is -- it is sufficient to
9 impose the requirement that he stay in the country, that he
10 respond and report to the authorities. There is no need for
11 this electronic monitoring.

12 And I do need to make one important point, because
13 this is, I know, a point that's important to the court. And
14 that is, what's the big deal? The big deal, Your Honor,
15 is -- is, first of all, that as I've explained to the court,
16 there is some Japanese cultural issues here, and there are
17 also issues, Your Honor, relating to his ability to interact
18 with customers.

19 As I mentioned in chambers, he's only met with a
20 customer on one occasion in the 50 days since he has --
21 since he was arrested. This is a source of embarrassment.
22 He's dealing with other Japanese customers here in the
23 United States.

24 THE COURT: How is his ability to interact with
25 customers affected?

1 MR. SQUERI: It's --

2 THE COURT: The electronic monitoring is not
3 visible, is it?

4 MR. SQUERI: Your Honor, if somebody crosses their
5 legs, if they're -- they spent -- I understand that when
6 Japanese business folks get together, it's not for a
7 one-hour meeting, they get together for a long time, for a
8 number of hours. And they're going to see it at some point.
9 And this is -- it's a real source of embarrassment and shame
10 in their culture -- under their culture.

11 And I still -- and we still also have to come back
12 to the fact that under the Bail Reform Act, it should be the
13 least -- the least restrictive conditions that are needed
14 under the circumstances.

15 THE COURT: Condition or combination of
16 conditions.

17 MR. SQUERI: Yes. Yes, Your Honor, I understand.
18 I am just trying to speak quickly right now. I apologize.

19 THE COURT: That's okay.

20 MR. SQUERI: But in this particular instance, the
21 electronic monitoring is not required. He has roots here.
22 He has a substantial employer.

23 THE COURT: What are his roots here other than his
24 employment?

25 MR. SQUERI: His roots here don't go beyond his

1 employment, but I think it would be unfair to not
2 characterize those as significant. He has worked for this
3 company his entire working career, over 30 years. If he
4 were to do something harmful to his company that would make
5 his company look bad, that -- that is not something
6 inconsequential.

7 And I still go back to the fact, Your Honor, that
8 this is highly unusual and, you know, and he shouldn't be
9 treated differently.

10 THE COURT: All right. You've made your point.

11 If you would like to submit additional argument in
12 writing, you may do so. I apologize for having --

13 MR. SQUERI: I understand.

14 THE COURT: -- to limit your time. However, I
15 want to be fair to the government and give them an
16 opportunity to argue as well.

17 MR. SQUERI: I understand, Your Honor.

18 THE COURT: You may submit any additional written
19 argument that you wish.

20 MR. SQUERI: Thank you, Your Honor.

21 THE COURT: Thank you.

22 Ms. Manschreck?

23 MS. MANSCHRECK: Thank you, Your Honor.

24 Your Honor, the defendant is a Japanese national
25 without substantial ties to the United States. He has been

1 here on a temporary work assignment since August of 2011.
2 His wife and his family are in Japan. He has no known
3 significant assets here, neither a house nor car in his
4 name.

5 He has been charged with a serious crime, which
6 carries a ten-year penalty maximum. Our preliminary
7 calculation of his guidelines range is between 33 and 41 --
8 sorry, 33 and 41 months' imprisonment.

9 And he is aware of a variety of sources of
10 evidence, including his own recorded statements in a call,
11 as well as his admissions during an interview, which have
12 not been undermined in the course of this hearing as it
13 relates to their being incriminating.

14 The defendant's challenge to the jurisdiction of
15 the United States in relation to this case, the government
16 would submit, is unsubstantiated, but in all events, would
17 be fully litigated, and, thus, is not the sort of thing --
18 we would describe it as a thin reed upon which to conclude
19 that he should not be concerned about facing potentially
20 significant jail time, and, therefore, have a motive to
21 leave the United States.

22 As Your Honor has noted, the defendant has not
23 identified anything that a location monitoring prevents him
24 from doing. And indeed, Your Honor's prior order modifying
25 the conditions of release have allowed him to travel under

1 certain circumstances to visit customers, and has addressed
2 the specific restrictions that he had identified were
3 preventing him from doing his job.

4 Your Honor, location monitoring combined with the
5 other conditions that have been imposed are indeed the
6 combination of conditions that is least restrictive, but
7 necessary to assure his continued appearance at court dates.

8 In regards to the extradition treaty, Your Honor,
9 I would point you to Article V of that extradition treaty
10 that the defendant has put in front of you today, which
11 specifically states that it is within the Japanese
12 Government, as it is in the United States Government's
13 discretion whether to extradite their own national. And for
14 that reason, it is not a treaty upon which we can
15 definitively rely so that the defendant would appear for
16 court dates.

17 The other thing that I would -- I would proffer as
18 a professional representation is the fact that Japan has
19 never extradited someone for an antitrust crime.

20 With respect to the defendant's ability to obtain
21 a passport in an embassy, I too can make a representation
22 based on the Department of Justice's contact at the -- at
23 the Japanese embassy, which is the legal attache there, a
24 Mr. Watanobbi, who has said that the Japanese embassy and
25 consulates in the United States do not have any established

1 procedure to prevent the issuance of a new passport to a
2 Japanese national who is a fugitive or is otherwise
3 violating a court order.

4 They could ask the foreign ministry in Tokyo on a
5 case-by-case basis whether the ministry would be willing, at
6 the request of the U.S. Government, to order its consular
7 affairs officials in the U.S. not to issue a new passport to
8 a particular individual, but it is not at all clear how the
9 foreign ministry would respond to such a request.

10 In other words, there is no guarantee that we can
11 prevent him from obtaining a new passport and absconding in
12 the event that he is not on location monitoring.

13 As was brought out during the testimony of Agent
14 Brown, the defendant would be capable of traveling to Canada
15 or to Mexico and obtaining a passport from the consulate in
16 those countries, and then absconding to Japan as well.

17 The defendant has pointed to a variety of
18 statistics. I haven't had a chance to fully review them.
19 But what I can say is that the individual that Mr. Squeri
20 pointed out during his argument from Taiwan, that defendant
21 is named Homy Hong-Ming Hsu, and he is the most recent
22 arrest in an antitrust case. He was arrested last year.

23 His case is in the Northern District of
24 California. And I have a copy of the magistrate's order
25 denying a similar motion in that case. That defendant was

1 also placed on location monitoring. He's a Taiwanese
2 national. He was arrested on a layover in Los Angeles, and
3 had been traveling from Taiwan to Mexico.

4 The orders -- the conditions of his release were
5 electronic monitoring, travel restricted to the Northern
6 District of California, curfew, of the same duration as the
7 defendant has, and the allowance for some limited trips to
8 nearby cities and states. Very similar to the conditions
9 that are presently imposed upon this defendant.

10 The defendant in that case had wanted to go to
11 Taiwan for Chinese New Year to see his octogenarian parent
12 who was ailing, and the court denied that motion.

13 And I have the order with me, and if you'll allow
14 me to approach, I can give that to you.

15 THE COURT: Thank you. And did you give a copy to
16 Mr. Squeri as well? Thank you.

17 MS. MANSCHRECK: I have.

18 And I would encourage review of that order,
19 because it's very similar to the situation with the
20 defendant here. That defendant had virtually no ties to the
21 United States. He was facing also a serious charge of an
22 antitrust violation.

23 And the judge noted specifically that the company
24 in Taiwan would have an incentive not to let him return,
25 because they too would face charges.

1 And I would note that that particular defendant's
2 bond was set at an even higher amount than this defendant's.

3 Other than that case, I am not aware of any other
4 comparable case of an antitrust defendant who is a foreign
5 national without substantial assets in the United States who
6 is in the United States whom we have not arrested.

7 Other than directing you also to the pretrial
8 services conclusion with respect to this defendant, I would
9 otherwise rest on our briefs and on the evidence that you've
10 heard today.

11 THE COURT: All right. Thank you very much. I
12 can leave you one minute. Is that right, Ms. Interpreter?

13 MR. SQUERI: I think she has until ten to, Your
14 Honor, she said.

15 THE INTERPRETER: Yes, Your Honor.

16 THE COURT: Pardon?

17 MR. SQUERI: I think she said she has until ten
18 minutes before the hour.

19 THE COURT: That's what it is.

20 MR. SQUERI: Oh, that's -- that was, I guess --

21 THE COURT: I have just one quick question I need
22 to ask you, and any additional comments you want to submit
23 in writing, either counsel can do that.

24 Does your client interact only with Japanese
25 companies and contacts and customers?

1 MR. SQUERI: I'd have to ask him to be able to
2 make that broad statement.

3 THE COURT: Okay.

4 MR. SQUERI: But I understand, Your Honor, that he
5 principally does, because, yeah, he's dealing with Japanese
6 auto manufacturers here in the United States.

7 THE COURT: All right. Thank you.

8 MR. SQUERI: If I could just make a few very quick
9 points in response, Your Honor. I'll take 60 seconds.

10 THE COURT: Sixty seconds.

11 MR. SQUERI: Yeah. I think one of the things
12 that's very important that the court just heard is that
13 consistent with the research we did, the Justice Department
14 could only identify one circumstance where this has been
15 done before. And I think it's important to point out that
16 that was the chairman of the board of this company.
17 Mr. Yoshida doesn't hold a position of that -- of that
18 level.

19 And again, as I pointed out earlier, Your Honor,
20 Taiwan does not have an extradition treaty with the United
21 States.

22 And it's important to note that the Justice
23 Department, in taking its positions regarding extradition
24 from Japan, has -- has convinced a number of people to plead
25 guilty here in the United States, about ten or so just in

1 the past -- past year.

2 And I have to take strong issue with counsel's
3 statement that there hasn't been anyone here in the United
4 States similar to Mr. Yoshida where there is a pending
5 antitrust investigation. I know personally of situations
6 where the Justice Department had individuals employed here
7 in the United States, whose -- whose homes were in Japan and
8 were under those circumstances, there weren't -- it wasn't a
9 rush -- a rush to an arrest here.

10 I think what happened here was there was a rush to
11 arrest based on erroneous information in a telephone
12 conversation. It's unfair to treat Mr. Yoshida differently
13 because the Justice Department made a mistake with respect
14 to a crucial bit of factual information.

15 THE COURT: All right. Thank you very much.

16 Does either counsel want to submit anything
17 further to the court in writing, any written argument?
18 Ms. Manschreck?

19 MS. MANSCHRECK: Your Honor, we'll want to review
20 what the defendant had submitted --

21 THE COURT: All right.

22 MS. MANSCHRECK: -- and make a determination about
23 that.

24 THE COURT: Can I give you ten days? Is that
25 enough time for each of you to submit any additional

1 filings?

2 MR. SQUERI: If I could ask, how long can it be
3 before we get the transcript? I'm sure that's going to
4 govern what the government does, too.

5 We'll get it to you within ten days, Your Honor.

6 THE COURT: Thank you.

7 MR. SQUERI: Thank you.

8 THE COURT: Ms. Interpreter, thank you very much
9 for your services this afternoon. I thank you on behalf of
10 counsel, the parties and the court, and I hope that you can
11 make it to your next engagement on time. Thank you.

12 THE INTERPRETER: Thank you very much, Your Honor.

13 THE COURT: (Inaudible) submitted a motion,
14 stipulated motion, and the court has reviewed the stipulated
15 motion and the court finds it well taken and the court will
16 grant --

17 Can you hear me now? I think that was my fault.

18 There is also pending before the court a second
19 joint motion to extend time for a preliminary hearing
20 pursuant to Rule 5.1(d) and to extend time to return
21 indictment pursuant to 18, U.S.C., Section 3161(h).

22 The court has reviewed the joint motion and the
23 proposed order, and the court is satisfied that the motion
24 is well stated, based upon good grounds, and the court will
25 grant the order on joint motion.

1 Anything further?

2 Okay. And the court is instructed that she should
3 confirm the date of the preliminary hearing on September
4 12th, 2012, at 11:00 in the morning, at which time we
5 anticipate having a live translator.

6 And the time for filing the indictment has been
7 extended from August 22nd to September 21st, 2012, pursuant
8 to Title 18 of the United States Code, Section 3161(h). And
9 the ends of justice, the court finds, are thereby served by
10 extending this time so that the parties can have an
11 opportunity to fully explore the opportunity for an
12 expeditious and fair resolution of this matter.

13 MR. SQUERI: Just one quick question.

14 THE COURT: Sure.

15 MR. SQUERI: In terms of calculating the time when
16 we're supposed to make our written submissions, would that
17 be ten -- ten --

18 THE COURT: Days.

19 MR. SQUERI: -- calendar days?

20 THE COURT: Excluding weekends.

21 MR. SQUERI: Oh, excluding weekends, so we're
22 going business days. Okay. Thank you. I just wanted to be
23 clear on that.

24 THE COURT: Certainly. Thank you.

25 Anything further from Ms. Manschreck?

1 MS. MANSCHRECK: No, Your Honor.

2 THE COURT: Mr. Miller?

3 PROBATION OFFICER: No, Your Honor. Thank you.

4 THE COURT: Thank you very much. That will
5 complete this -- oh, I did want to know the name of company
6 counsel.

7 DANIELLE: Danielle (inaudible.)

8 THE COURT: Do you have a business card?

9 DANIELLE: I do.

10 THE COURT: Thank you.

11 And that will complete this hearing. Thank you.

12 (Proceedings concluded at 2:55 o'clock p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

s/Lori A. Callahan
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